

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

BANK OF AMERICA, NATIONAL  
ASSOCIATION,

*Plaintiff,*

v.

MARTIMIANO S. RODRIGUEZ,

*Defendant.*

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Civil Action No. SA-15-CV-495-XR

**DISMISSAL ORDER**

On this date the Court considered the status of the above-captioned case. The Court finds that this cause of action was commenced by the filing of the Plaintiff's complaint on June 16, 2015. On October 30, 2015, the Court issued a Show Cause Order requiring the Plaintiff to show good cause as to why the Defendant had not yet been served. Docket no. 5. Plaintiff responded on November 10, 2015, and requested that it be given an extension of time to serve the Defendant.

Even though over 120 days have passed since the filing of the lawsuit and over 40 days have passed since the Court issued a Show Cause Order, the Court still has no record that the Defendant named by the Plaintiff in this case has been served or has agreed to waive service. Rule 4(c) of the Federal Rules of Civil Procedure provides in pertinent part:

The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service.

FED. R. CIV. P. 4(c)(1). Proof of service must be made to the court by filing the server's affidavit. FED. R. Civ. P. 4(l)(1). Rule 4 further provides that:

If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

FED. R. CIV. P. 4(m).

The 120-day time period for service has more than expired in this case and there is no indication that Defendant has been properly served or has agreed to waive service, despite Plaintiff being given notice and an extra 40 days. Therefore, this Court “must dismiss the action without prejudice.” *Id.*, see also *Lepone-Dempsey v. Carroll County Com'rs*, 476 F.3d 1277, 1281 (11th Cir. 2007).

### CONCLUSION

The Court DISMISSES all claims in this case without prejudice pursuant to Rule 4(m). Accordingly, the Clerk's office is directed to CLOSE this case.

It is so ORDERED.

SIGNED this 22nd day of December, 2015.

  
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XAVIER RODRIGUEZ  
UNITED STATES DISTRICT JUDGE